

Lafcadio Darling, OSB No. 220665
ldarling@hwb-law.com
Holmes Weddle & Barcott PC
3101 Western Avenue, Suite 500
Seattle, WA 98121-3071
206-292-8008

Attorney for Plaintiff
Bank of the Pacific

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

BANK OF THE PACIFIC, a Washington
state chartered financial institution,

Plaintiff,

v.

KEN & AL, O.N. 517487, its Engines,
Machinery, Appurtenances, etc.,
In Rem;

and

and F/V KEN & AL INC, an Oregon limited
liability company, and RAYMOND D.
GRAVES, individually and as guarantor of
the F/V Ken & Al, Inc. loans,
In Personam,

Defendants.

Case No.:

**VERIFIED COMPLAINT TO
FORECLOSE PREFERRED SHIP
MORTGAGE IN REM,
ENFORCEMENT OF SECURITY
INTEREST, AND FOR BREACH OF
CONTRACT**

IN ADMIRALTY

Bank of the Pacific, a Washington state chartered financial institution, (referred to at times
hereafter as “Plaintiff”) alleges as follows:

VERIFIED COMPLAINT TO FORECLOSE PREFERRED SHIP
MORTGAGE IN REM, ENFORCEMENT OF SECURITY
INTEREST, AND BREACH OF CONTRACT - 1

HOLMES WEDDLE & BARCOTT, PC
3101 WESTERN AVENUE, SUITE 500
SEATTLE, WA 98121-3071
TELEPHONE (206) 292-8008
FAX (206) 340-0289

3871-34235

I. PARTIES

1.1. BANK OF THE PACIFIC is a Washington state chartered financial institution doing business in this District.

1.2. Defendant RAYMOND GRAVES is an individual who, on information and belief, resides in this District. Defendant Graves is the governor of Defendant F/V Ken & Al, Inc.

1.3. Defendant F/V KEN & AL INC (“FK&A, Inc.”) is an Oregon corporation operating at all times in the State of Oregon and in this District.

1.4. *In rem* Defendant, the vessel F/V KEN & AL, is a United States Coast Guard Documented Vessel (O.N. 517487) which is owned by *in personam* Defendant FK&A, Inc. and which is currently located in the waters of this District.

II. JURISDICTION AND VENUE

2.1 This is a matter of admiralty and maritime jurisdiction under 28 U.S.C. §1333 and 46 U.S.C. §31322 and §31325 and an admiralty and maritime matter within the meaning of Fed. R. Civ. P. 9(h). The Court further has supplemental jurisdiction over any state law claims under 28 U.S.C. §1367. Finally, the Court can exercise jurisdiction over this matter based on the parties’ diversity of citizenship under 28 U.S.C. §1332.

2.2 Venue is proper under 28 U.S.C. §1391 since the Defendants are located in this District and the acts and omissions giving rise to this action occurred in this District.

III. STATEMENT OF FACTS

3.1 On or about September 11, 2020, Defendant FK&A, Inc. as Borrower and entered into a Business Loan Agreement with Plaintiff in the amount of \$206,250.00. The Loan Agreement had a maturity date of October 15, 2027 and included an amortization schedule calling for annual payments in stated amounts starting in October 15, 2021. A true and correct copy of the Business Loan Agreement is attached hereto as **Exhibit A**.

3.2 Alongside the Loan Agreement, Defendant FK&A, Inc. also signed a Promissory Note in the amount of \$206,250 to document the obligation to repay the Business Loan made by Plaintiff under the terms and conditions stated therein. The Note required borrowers to repay the entire amount due, plus all accrued unpaid interest by October 15, 2027. The Note and Loan Agreement provide for interest to accrue on a 360-day basis at an annual rate of 5.5% until paid in full. The Note further provides that in the event of default under the Note or Agreement, the default interest rate will increase to 18% per annum. If loan payment is more than 10 days later, the Note also authorizes a late charge of \$500 or 5% of the unpaid balance, whichever is less. Finally, in the event of default, the Note provides that the entire principal balance and all accrued unpaid interest will be immediately due and payable. A true and correct copy of the Promissory Note is attached hereto as **Exhibit B**.

3.3 Alongside the Loan Agreement and Note Defendant GRAVES signed a Commercial Guaranty with Plaintiff, under which GRAVES gave a personal and continuing guaranty of the loans made by Plaintiff to FK&A, Inc., including the Business Loan. A true and correct copy of the signed Commercial Guaranty is attached hereto as **Exhibit C**.

3.4. At the same time, Defendant FK&A, Inc. also signed a Commercial Security Agreement to support the Business Loan. This Security Agreement listed as collateral the *in rem* Defendant Vessel F/V KEN & AL, as well as its equipment, proceeds, intangibles and other similar collateral. A true and correct copy of the Commercial Security Agreement is attached hereto as **Exhibit D**. Plaintiff's security interest in this collateral was recorded in a UCC filing submitted to the Oregon Secretary of State as required by the Oregon Uniform Commercial Code.

3.5 As further security on the debt on September 11, 2020, Plaintiff and Defendant FK&A, Inc. entered into a Preferred Ship Mortgage for the *in rem* Defendant Vessel in the amount of \$206,250. The Mortgage gave Plaintiff mortgagee rights and security on 100% of the Vessel, along with all of her records, accounts, intangibles and proceeds to the full extent available under 46 U.S.C. §31321 so support the Business Loan. A true and correct copy of the Preferred Mortgage on the Vessel is attached hereto as **Exhibit E**.

3.6 The Business Loan Agreement, Promissory Note, Commercial Guaranty, and Commercial Security Agreement each provide for the recovery of Plaintiff's attorneys' fees and costs in the event of a default in the obligations stated in those agreements.

3.7 Defendants made the regularly scheduled Business Loan payment in October 2021 as agreed. However, Defendants failed to make the payment due on October 15, 2022. That amount remains unpaid and owing and Defendants are in default.

3.8 The current principal due on the Business Loan is \$191,315.44. In addition, the Loan has incurred a late charge of \$500. Accrued regular interest at the agreed rate through the default date (10/15/22) is \$10,610.04. Post-default interest at the default rate from October 16, 2022

through March 1, 2023 is \$13,105.11. Default interest continues to accrue on the Loan at a rate of \$95.66/day.

3.9 The Vessel is currently moored in Warrenton, Oregon. To the knowledge of Plaintiff, the Vessel is not in active use and no one is residing on the Vessel.

IV. FIRST CAUSE OF ACTION: BREACH OF CONTRACT

4.1 Plaintiff re-alleges the paragraphs above as if fully set forth herein.

4.2 By failing to meet their payment obligation under the Business Loan Agreement and Promissory Note, *in personam* Defendants defaulted on the Business Loan Agreement, Guaranty, Security Agreement, Promissory Note, and Preferred Ship Mortgage.

4.3 As a result of its default and breach of these agreements, Defendants are liable to Plaintiff in the principal amount of \$191,315.44, plus a late fee of \$500, plus additional accrued interest through March 1, 2023 of \$23,715.15, plus additional daily accrued interest, attorney's fees, and all other collection costs, including arrest costs.

V. SECOND CAUSE OF ACTION: FORECLOSURE OF PREFERRED SHIP MORTGAGE AND ARREST OF VESSEL

5.1 Plaintiff re-alleges the paragraphs above as if fully set forth herein.

5.2 The Preferred Ship Mortgage secured by the *in rem* Defendant Vessel F/V KEN & AL provided that in the event of default under the Business Loan Agreement, Security Agreement or Promissory Note, Plaintiff as mortgagee has the right to foreclose on its mortgage and take possession of the Vessel and any other accounts or assets of the Vessel as a remedy for default.

5.3 Since *in personam* Defendants have defaulted under the terms of the loan documents,

Plaintiff has the right to immediately foreclose on the Ship Mortgage and arrest the Vessel for the purpose of sale to satisfy the debt to Plaintiff.

**VI. THIRD CAUSE OF ACTION: FORECLOSURE OF UCC
LIEN AGAINST COLLATERAL**

6.1 Plaintiff re-alleges the paragraphs above as if fully set forth herein.

6.2 The Commercial Security Agreement signed by *in personam* Defendants granted Plaintiff a security interest in certain collateral, including the Vessel and its equipment and gear, accounts, related rights and other business assets. In the event of default, this Agreement gives Plaintiff the right to take possession of all collateral listed in the Security Agreement and to sell such collateral to satisfy the debt to Plaintiff in accordance with the Uniform Commercial Code.

6.3 Since Defendants have breached the Business Loan Agreement, Commercial Security Agreement, Promissory Note, and Commercial Guaranty, Plaintiff has the right to foreclose on its UCC security interest in the collateral in accordance with ORS 79.0609, including but not limited to the Vessel, and sell these assets in satisfaction of the debt as alleged herein as authorized under ORS 79.0610- 79.0615.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

1. That this Court decree payment due by the Vessel, its appurtenances and assets, and each of the Defendants of the following:

a. Principal of \$191,315.44, late charges of \$500, and interest through March 1, 2023 of \$23,715.15 with per diem interest accruing thereafter a rate of \$95.66.

VERIFIED COMPLAINT TO FORECLOSE PREFERRED SHIP
MORTGAGE IN REM, ENFORCEMENT OF SECURITY
INTEREST, AND BREACH OF CONTRACT - 6

HOLMES WEDDLE & BARCOTT, PC
3101 WESTERN AVENUE, SUITE 500
SEATTLE, WA 98121-3071
TELEPHONE (206) 292-8008
FAX (206) 340-0289

3871-34235

b. Reasonable attorneys' fees and costs to be proven; and

c. The costs of this action including charges for all fees of the U.S. Marshal, for keepers, for the Substitute Custodian, and their costs incurred in this action and for all expenses for the sale of the Vessel, her engines, machinery, and appurtenances, etc.

2. That Plaintiff be adjudged the holder of a first preferred ship mortgage on the Vessel and her appurtenances, including the for the payment of sums due, including costs and attorneys' fees, and that this Court declare the lien of the said Mortgage to be superior to all other liens which may exist against the Vessel, its appurtenances and rights.

3. That the Mortgage be foreclosed and the Vessel and its appurtenances, including but not limited to the Permits, be sold, separately and singly or together, by the U.S. Marshal and the proceeds of the sale be applied and delivered to pay demands and claims of Plaintiff in the amount and to the extent as specifically set forth herein, together with costs and attorneys' fees, and that it be declared that any and all persons, firms or corporations claiming any interest in the Vessel and its appurtenances are forever barred and foreclosed of and from all rights of equity or redemption or claim in and to the Vessel and its appurtenances.

4. That *in rem* process in due form of the law issue against the Vessel, its appurtenances, including, without limitation, other collateral.

5. That the Court issue a warrant of arrest, authorizing the U.S. Marshal to arrest the Vessel in accordance with the Supplemental Admiralty Rules, and that the Vessel be placed in the hands of a Substitute Custodian.

6. That the Court order the sale of the Vessel and other collateral by the U.S. Marshal and that, as such Marshal's sale, Plaintiff be permitted to bid, without cash deposit, its judgment, accrued interest, costs and attorneys' fees, up to the full amount thereof.

7. That the Court authorize Plaintiff to seize and dispose of any collateral covered by the Commercial Security Agreement in accordance with Oregon Law, though judicial or non-judicial means, as permitted by applicable law and Rules.

8. That Plaintiff have such other and further relief as in law and equity it may be entitled to receive.

Dated: March 9, 2023.

HOLMES WEDDLE & BARCOTT PC

s/ Lafcadio H Darling

Lafcadio H Darling, OSB No. 220665
Attorney for Plaintiff Bank of the Pacific

VERIFICATION

I, Wayne Kepfer, being first duly sworn, upon oath depose and state that I am Senior Vice President and Credit Risk Officer for Bank of the Pacific, the Plaintiff in this action. I have read the above and foregoing Complaint, know the contents thereof and believe the same to be true. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 9th day of March, 2023.

**Wayne R.
Kepfer**

Digitally signed by: Wayne R. Kepfer
DN: CN = Wayne R. Kepfer email =
wkepfer@bankofthepacific.com C =
US O = Bank of the Pacific OU =
Credit Administration
Date: 2023.03.09 11:20:36 -08'00'

Wayne Kepfer
Senior VP, Credit Risk Officer
Bank of the Pacific

VERIFIED COMPLAINT TO FORECLOSE PREFERRED SHIP
MORTGAGE IN REM, ENFORCEMENT OF SECURITY
INTEREST, AND BREACH OF CONTRACT - 9

HOLMES WEDDLE & BARCOTT, PC

3101 WESTERN AVENUE, SUITE 500
SEATTLE, WA 98121-3071
TELEPHONE (206) 292-8008
FAX (206) 340-0289

3871-34235